
(2008) 09 P&H CK 0066
In the Punjab And Haryana At Chandigarh

Shreyans Industries Limited	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Punjab Value Added Tax Act, 2005 — Section 68

Citation : (2008) 18 VST 493

Hon'ble Judges : Ajay Tewari, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the asses-see u/s 68 of the Punjab Value Added Tax Act, 2005 (hereinafter referred to as the "VAT Act") as well as u/s 9(2) of the Central Sales Tax Act, 1956 read with Section 68 of the VAT Act impugning the judgment and order dated July 28, 2008 passed by the Punjab Value Added Tax Tribunal, Chandigarh (hereinafter referred to as "the Tribunal").

2. The assessee-company is a dealer registered under the provisions of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as "1948 Act") which stands replaced by the Punjab VAT Act, 2005. The assessment year concerned in the present appeal is 2000-01. The assessee filed its quarterly return for the said year. The time-limit for completing the assessment is three years from the end of the year u/s 11(3) of the 1948 Act.

3. The said period expired on April 30, 2004 but no assessment was made up to that date. On October 5, 2006 notice for assessment was issued u/s 11(3). The assessee took an objection that the notice was beyond the period of limitation. Thereafter the order granting extension of time was passed on August 17, 2007 by the Excise and Taxation Commissioner, Patiala. Later, assessment was made and demand notice was issued.

4. The assessee preferred an appeal against the extension order dated August 17, 2007 passed u/s 11(10) of the 1948 Act. The Tribunal held that since there was power of extension, the contention that the said power must be exercised within limitation could not be accepted. Reason given for extension of time was that the case of the assessee for the year 1999-2000 was pending with the Tribunal.

5. In the appeal the following substantial questions of law have been proposed:

(i) Whether the learned Tribunal is justified in upholding the orders July 25, 2007 (annexure A-9) and August 17, 2007 (annexure A-10) of the Excise and Taxation Commissioner (respondent No. 3) passed without issuing any notice and without granting any opportunity of being heard to the appellant?

(ii) Whether the learned Tribunal is justified in not deciding the contention of the appellant that the orders dated July 25, 2007 (annexure A-9) and August 17, 2007 (annexure A-10) of the Excise and Taxation Commissioner (respondent No. 3) are void ab initio being violative of principles of natural justice as the same were passed ex parte without issuing any notice and without allowing any opportunity of being heard to the appellant ?

(iii) Whether the learned Tribunal is justified in upholding the orders dated July 25, 2007 (annexure A-9) and August 17, 2007 (annexure A-10) passed by Shri A. Venu Prasad even when he was appointed as Excise and Taxation Commissioner, Punjab under notification dated August 24, 2007 ?

(iv) Whether the learned Tribunal is justified in construing the notification dated August 24, 2007 (annexure A-15) in a manner so as to validate the quasi-judicial orders dated July 25, 2007 (annexure A-9) and August 17, 2007 (annexure A-10) passed by respondent No. 3 ?

(v) Whether, in the facts and in the circumstances of the case, the learned Tribunal is justified in holding that respondent No. 3 validly extended the time even when the limitation to pass the orders of assessment had already expired?

(vi) Whether the learned Tribunal is justified in holding that respondent No. 3 had validly extended the time to pass the orders of assessment even when the assessment proceedings for the years 2000-01 to 2003-04 were initiated only after the expiry of the period of limitation ?

(vii) Whether the learned Tribunal is justified in upholding the orders dated July 25, 2007 (annexure A-9) and August 17, 2007 (annexure A-10) granting extension of time to pass the orders of assessment not for any supervening events but for default/failure of the assessing authority ?

(viii) Whether the learned Tribunal is justified in holding that the pendency of the case for the year 1999-2000 is a valid reason to enable respondent No. 3 to extend the time to pass the orders of assessment?

6. We have heard learned Counsel for the parties.

7. Learned Counsel for the assessee submits that the extension of time u/s 11(10) of the 1948 Act is required to be within the period of limitation for assessment and pendency of the appeal of the assessee for the previous year was not a valid reasons. It is further submitted that in exercising power granting extension of time, principle of natural justice was required to be followed and opportunity of being heard was required to be given.

8. Learned Counsel for the respondent-Revenue submitted that there being no limit for exercise of power of extension, the power was validly exercised. Pendency of appeal of the assessee for the previous year was a valid ground. Principles of natural justice were not applicable as power of extension was an administrative power and did not affect any civil rights.

9. The question for consideration is whether exercise of power of extension of time after assessment having become time-barred, was permissible. If so, what procedure was required to be followed and what are the parameters for extension of time.

10. We need not to go into other questions as we find that the order granting extension of time cannot be sustained on the ground that exercise of power after the assessment has become time-barred, is not permissible.

11. Learned Counsel for the assessee has relied upon a Division Bench judgment of the Karnataka High Court in *Bharat Heavy Electricals Ltd. v. Assistant Commissioner of Commercial Taxes (INT-I), South Zone, Bangalore* [2006] 143 STC 10 interpreting provisions of Section 12(6)(b) of the Karnataka Sales Tax Act, 1957. The court, in paras 8 and 9 of the judgment, observed as under: (at page 15)

8. . . But, where the question of limitation for making the assessment is involved, the point is whether such deferment order could be passed even after the expiry of the period of limitation giving notional retrospectivity thereto. In other words, for the question whether the power to pass a deferment order can be exercised even after the expiry of period of limitation, the answer should be, in our view, clearly in the negative. Deferment of assessment has the effect of enlarging the period of limitation which did not expire by the time the deferment order is contemplated to be passed. When once the period of limitation expires, the immunity against being subject to assessment sets in and the right to make assessment gets extinguished. Resort to deferment provisions does not retrieve the situation. There is no question of deferring assessment which had already become time-barred. The provision for exclusion of time in computing the period of limitation of deferment of assessment is meant to prevent further running of time against the Revenue if the limitation had not expired. But it does not confer a carte blanche to overcome the period of limitation by unduly extending the power beyond its legitimate purpose and parameters. The division Bench of the Gujarat High Court in *Javer Jivan Mehta v. Assistant Commissioner of Sales Tax (Appeals)* [1998] 111 STC 199 while considering a similar provision u/s 42(1) of

the Gujarat Sales Tax Act, 1969 held that the assessment proceedings must be stayed before the expiry of the period of limitation but not thereafter. The learned judges held:

In order to avail of the benefit of exclusion under the second proviso to Section 42(1), the assessment proceedings must be stayed before the expiry of the period of limitation. Any order made after the period of expiry of limitation staying the assessment proceedings cannot relate back to revitalise the proceedings. At the expiry of the period of three years from the dates stipulated in Section 42(1)(a), the authority to make an assessment order ends.

9. The same view was taken by a learned single Judge of this Court in *Shaw Wallace & Co. Ltd. v. Deputy Commissioner of Commercial Taxes (Assessment-2)*, Gandhinagar, reported in [1998] 111 STC 339. Mohan Kumar, J. observed thus:

Upon the lapse of the period mentioned in Sub-section (5) of Section 12 of the Karnataka Sales Tax Act, 1957, the right of the department to assess an assessee gets extinguished. That extinction confers a very valuable right on the assessee . . .

When an order of deferment is made, then the time fixed u/s 12(5) stops to run. Therefore, when such an order of deferment is being made, it should be during the period when the period u/s 12(5) is current. Hence, if such period had already come to an end, and the right to assess stood extinguished, then, the deferment contemplated u/s 12(6)(b) cannot stop the running of the period mentioned in Section 12(5). Therefore, it is crucial that such an order should come into existence after hearing the assessee and before the time u/s 12(5) has expired. . . .

12. We may now refer to the provisions of Section 11 of 1948 Act which are as under:

11. Assessment of tax.-(1) If the assessing authority is satisfied without requiring the presence of dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall pass an order of assessment on the basis of such returns within a period of three years from the last date prescribed for furnishing the last return in respect of such period.

(2) If the assessing authority is not satisfied without requiring the presence of dealer who furnished the returns or productions of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at a place specified therein, either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns.

(3) On the day specified in the notice or as soon as afterwards as the assessing authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the assessing authority may require on specified points, pass

an order of assessment within a period of three years from the last date prescribed for furnishing the last return in respect of any period.

(4) If a dealer having furnished returns in respect of a period fails to comply with the terms of notice issued under Sub-section (2), the assessing authority shall, within a period of three years from the last date prescribed for furnishing the last return in respect of such period, pass an order of assessment to the best of his judgment.

(5) If a dealer does not furnish returns in respect of any period by the last date prescribed, the assessing authority shall, within a period of three years from the last date prescribed for furnishing the last return in respect of such period and after giving the dealer a reasonable opportunity of being heard, pass an order of assessment to the best of his judgment.

(6) If upon information which has come into his possession, the assessing authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period but has failed to apply for registration, the assessing authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgement, the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and in case where such dealer has wilfully failed to apply for registration, the assessing authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, a sum not exceeding one-and-a-half times that amount.

(7) The amount of any tax, penalty or interest payable under this Act shall be paid by the dealer in the manner prescribed, by such date as may be specified in the notice issued by the assessing authority for the purpose and the date so specified shall not be less than fifteen days and not more than thirty days from the date of service of such notice:

Provided that the assessing authority, may with prior approval of the Assistant Excise and Taxation Commissioner, in-charge of the district extend the date of such payment or allow payment by instalments against an adequate security or bank guarantee.

(8) If the tax assessed under this Act or any instalment thereof is not paid by any dealer within the time specified thereof in the notice of assessment or in the order permitting payment in instalments, the Commissioner or any other person appointed to assist him under Sub-section (1) of Section 3 may, after giving such dealer an opportunity of being heard, impose on him a penalty not exceeding in amount the sum due from him.

(9) Any assessment made under this section shall be without prejudice to any penalty imposed under this Act.

(10) The Commissioner may, for reasons to be recorded in writing, extend the period of three years, for passing the order of assessment for such further period

as he may deem fit.

(11) Where the proceedings of the assessment are stayed by an order of any court, the period for which such stay remains in force, shall not count towards computing the period of three years specified under this section for passing the order of assessment.

(12) The assessing authority may, on his own motion, review any assessment order passed by him and such review shall be completed within a period of one year from the date of the order under review.

13. Reference to the above provisions shows that there is no express mention of any power to grant extension after the assessment has become time-barred. In absence of any contrary view, we respectfully follow the judgment of the Karnataka High Court in Bharat Heavy Electricals Ltd.'s case [2006] 143 STC 10 which is holding the field for the last more than ten years on an analogous provision and hold that the power of extension of time for completing assessment has to be exercised before the assessment becomes time-barred. This question is answered in favour of the assessee. Other questions need not be gone into.

14. Accordingly we allow this appeal and set aside the impugned order.